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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

**Note verbale dated 15 December 2000 from the Permanent Mission of Iraq
to the United Nations Office at Geneva addressed to the United Nations
High Commissioner for Human Rights**

The Permanent Mission of the Republic of Iraq to the United Nations Office in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to enclose herewith the document entitled "Remarks on Kuwaiti Missing Persons". *

The Permanent Mission of the Republic of Iraq would be grateful if the High Commissioner for Human Rights could arrange to have this document distributed as an official document of the upcoming fifty-seventh session of the Commission on Human Rights, under its agenda item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world".

* Reproduced as received, in Arabic and English only.

Annex

REPUBLIC OF IRAQ

Observations concerning Kuwaiti missing persons

April/May 2000

1. In accordance with Security Council resolution 686 of 2 March 1991, Iraq released all the prisoners and detainees held in Iraq, who were returned to their home countries with the help of the International Committee of the Red Cross. The total number of persons handed over in March 1991 amounted to 6,222. Iraq also returned the bodies of those who had died.
2. In its statements, the International Committee of the Red Cross affirmed that the total number of Kuwaitis and other Arab and foreign nationals (prisoners of war and civilians) who had been released by Iraq and handed over under ICRC supervision since the beginning of March 1991 amounted to 7,023 persons.
3. The work on this issue began with the approval and signature, at Riyadh on 12 April 1991, of the document entitled "Plan of action to ascertain the whereabouts and fate of missing military personnel and civilians" by the parties concerned. That document set forth the procedures for the gathering of information on missing persons, as well as the methods of dealing with individual files.
4. In 1992 and 1993, the Kuwaiti authorities submitted 627 files requesting the tracing of missing Kuwaitis and nationals of third countries. However, any attempt to shed light on the fate of those persons who, according to the Kuwaiti authorities, were missing obviously necessitated consultation of the files and dossiers of the agencies concerned in the southern and central governorates and it was common knowledge that all the official institutions in those governorates had been raided by subversive groups who had burned, destroyed or stolen all their documents, records and files. In fact, those groups destroyed all the governmental institutions in those governorates which, as everyone is aware, remained under their control for varying periods of time amounting, in some cases, to more than two weeks during which there was a total absence

of central authority. As a result, a large number of persons fled from the Iraqi detention centres located in those governorates after the outbreak of the disturbances there in the first week of March 1991. The vast majority of the testimonies contained in the files of missing Kuwaitis submitted by the Kuwaiti authorities stated that the persons concerned had last been seen in those very detention centres, affected by the disturbances, from which the Kuwaiti detainees had fled. In this connection, it is noteworthy that, at a press conference held in New York on 3 May 1995, Salem al-Sabah, the Chairman of the National Committee on Kuwaiti Prisoners of War and Missing Persons, said that: "Following the liberation of my country, Kuwait, there were more than 6,000 prisoners, not guilty of any crime, whom the Iraqi authorities were holding. By virtue of the uprising in the south, in the region of Basra, 5,772 prisoners were released. Some of these returned on foot while others sought refuge with the Red Cross and were subsequently returned to Kuwait." As a result, it became extremely difficult to ascertain the whereabouts of those missing persons.

5. Due to the above-mentioned circumstances, the Iraqi authorities were faced with the complex problem of replying to information. At the beginning of 1994, the authorities adopted the method of "recollection", which produced useful and practical information that was duly submitted to the Kuwaiti authorities through the International Committee of the Red Cross. As a result of the information obtained through this process of reliance on memory and the tracing endeavours made by the Tripartite Committee and the Technical Subcommittee, which were established on 8 December 1994, 29 individual files on Kuwaiti citizens and nationals of third countries were closed. One of these files concerned a female Kuwaiti citizen who was living a normal life in Iraq and returned to her family in Kuwait in 1996. The remains of another Kuwaiti missing person were returned during the same year. Many files were closed when the whereabouts of the persons concerned were established, most of them being found to be alive. However, the Kuwaiti authorities refused to acknowledge the true status of those persons. In short, the number of persons whom the Kuwaiti authorities claimed were missing diminished from 627 to 598 and the number of files under examination and on which preliminary information had been provided amounted to 301.

6. In 1996, in an endeavour to further the search for missing persons after the information derived from the process of "recollection" began to dwindle, the Iraqi authorities announced a number of initiatives, including the publication in April 1997 of the names and photographs of Kuwaiti and other missing persons on wall posters displayed in public places in the southern and

central Iraqi governorates affected by the disturbances. On 22 September 1996, appeals were made to citizens, through local Iraqi newspapers, to provide any available information on the whereabouts of missing persons. In addition, an Iraqi national committee, consisting of representatives of a number of non-governmental institutions, was established to examine and follow-up the cases of Iraqi and Kuwaiti missing persons in order to assist the competent authorities in their endeavours to trace those missing persons.

7. As a result of this campaign, the Iraqi authorities obtained preliminary information to the effect that, when a hostile Saudi aircraft was shot down at al-Radhi in Iraq in February 1991, an Iraqi officer buried some of the remains of its pilot in a desert area near the Iraqi-Saudi border. Preparations are currently being made in Iraq and Saudi Arabia to search for those remains in the said desert area under the auspices of the International Committee of the Red Cross.

8. As a token of its cooperation in the quest for missing persons, on 9 December 1995 Iraq received an American team with which it conducted a joint search, under the auspices of the International Committee of the Red Cross, for the remains of an American pilot whose aircraft was shot down by Iraqi air defence units during the attack on Iraq in 1991. The wreckage of the American aircraft was found, together with evidence at the site of the crash which confirmed that the American pilot had been killed.

9. Iraq has declared its constant willingness to work in accordance with international rules and remains receptive to any initiative put forward by States and organizations which are not members of the said Committee with a view to finding a final and rapid solution to this humanitarian issue. Although Iraq has agreed to initiatives proposed by the League of Arab States, Morocco, Qatar, Russia, Indonesia and the European Parliament, Kuwait has rejected those initiatives.

10. Iraq's position in regard to the Tripartite Committee: Due to the circumstances resulting from the attack launched against Iraq on 16 December 1998 by the United Kingdom and the United States of America, which are members of the Tripartite Committee and the Technical Subcommittee, Iraq informed the International Committee of the Red Cross on 30 January 1999 that it was unable to participate in the meetings of those two committees. While explaining its position to the International Committee of the Red Cross, Iraq emphasized the following points:

(a) The issue of missing persons was a humanitarian issue that needed to be solved on the basis of international humanitarian law, its solution being in Iraq's interests.

(b) The reason for the failure to achieve the objectives of the work on that file were attributable to the political motives of other members of the Tripartite Committee which were continuing to politicize the humanitarian issue of missing persons.

(c) Two States members of the Tripartite Committee had launched a large-scale and devastating attack against Iraq in consequence of which continuation of the humanitarian work with those two States for the achievement of humanitarian objectives became unrealistic since that attack was an inappropriate way to create and further the climate of confidence needed to achieve decisive results.

Accordingly, Iraq indicated that it would not recognize the so-called "Coalition" formula, particularly since that formula included three States (France, the United Kingdom and the United States of America), which did not have individual files for the tracing of missing persons holding their nationality.

At the same time, Iraq emphasized that it would continue to inquire into the whereabouts of missing Kuwaitis and nationals of third States in collaboration with the International Committee of the Red Cross and the States members of the Committee which actually had files on missing persons.
